FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.523 OF 2006

Ganesh M.Shetty. ..Applicant.

Vs.

The State of Maharashtra. ..Respondent.

Mr.Nitin Sejpal and Pooja Bhojane for the applicant.
Mr.S.R.Shinde, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 17/2/2006.

P.C.

1. Heard both sides.

2. Rule, By consent, rule made returnable forthwith.

3. This is a petition impugning an order passed by the 10th Adhoc Addl. Sessions Judge,Sewree, Mumbai on 2.2.2006 rejecting an application for recall of the prosecution Witness No.2 Vitthal Hemadi. It appears that this witness was in the witness box and after completion of his examination in chief, the advocate for the accused was absent as he was busy in some other court. Another advocate by name Mr. Chavan holding for advocate of the accused filed an application to defer the cross examination on the ground that the advocate

for the accused was held up in another sessions court. The application of the accused was rejected. The accused who was in judicial custody was directed to cross examine the witness and he declined. All this occurred on 25.1.2006. On 27.1.2006, an application was made for recall of the witness by the accused. This application was rejected on the ground that since the accused was given opportunity to cross examine the witness, the application for recall would not lie under Section 311 of the Cr.P.C. On reading of Section 311, it is clear that the court has power to recall a witness if it appears to be essential towards the just decision of the case. In cases, where advocates are absent because they are busy in some other court, merely because the accused was allowed to cross examine, that by itself cannot be a ground for refusing recall of the witness. It must be borne in mind that the accused persons are often illiterate and have no knowledge of the Evidence Act and that is why they are permitted to appear through advocates. It should also be borne in mind that the absence of cross examination can cause serious prejudice to the case of the accused. In the circumstances, for the reasons which are referred above, in the interest of justice, I am inclined to make rule absolute. Accordingly, impugned order dated 2.2.2006 passed by the 10th Adhoc Addl.Sessions Judge is quashed

and set aside. The application for recall of prosecution witness No.2 Vitthal Hemadi is allowed. The trial court to take necessary steps to secure the presence of the prosecution witness No.2 for the purpose of cross examination by the advocate of the accused. With these directions, petition stands disposed of finally.

(R. S. MOHITE, J.)